



U.S. Department of Justice

United States Attorney
Southern District of New York

The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007

September 18, 2023

BY ECF

The Honorable Alvin K. Hellerstein
United States District Judge
Southern District of New York
United States District Courthouse
500 Pearl Street, Room 1050
New York, New York 10007

*The conf. is adjourned,
and time is excluded,
to Nov. 15, 2023,
at 12:00 PM.*

Re: *United States v. David Smothermon*, 19 Cr. 382 (AKH)

Dear Judge Hellerstein:

The Government writes, with the consent of defense counsel, to respectfully request an adjournment of the conference scheduled in the above-captioned matter for September 27, 2023.

On August 12, 2022, the Court granted the defendant's request for an adjournment of the trial scheduled in this matter pending the Supreme Court's rulings in *Percoco v. United States* and *Ciminelli v. United States*, which both relate to the "right to control" theory of wire fraud. In May of this year, the Supreme Court issued its decisions in those cases. Since that time, the parties have been engaged in discussions about how the case will proceed and, recently, as to a possible pre-trial resolution of the case. Those discussions are ongoing. Accordingly, the parties respectfully request that the Court adjourn the conference scheduled for September 27, 2023 to a date on or after November 15, 2023, to permit the parties to conclude their discussions about a pre-trial resolution of this matter. The Government also respectfully moves—with the consent of the defendant—for the exclusion of time under the Speedy Trial Act ("STA"), 18 U.S.C. § 3161(h)(7)(A), from September 27, 2023, until the new conference date set by the Court.

Respectfully submitted,

DAMIAN WILLIAMS
United States Attorney

By:

[Signature]

Katherine C. Reilly
Assistant United States Attorney
(212) 637-6521

cc: Terry Yates, Esq. and George Murphy, Esq. (by ECF)

9-18-23

[Signature]